

ATTACHMENT B
STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Essence Wilson (Respondent Wilson) was employed by Respondent Department of State Hospitals Patton (DSH) as an Office Assistant. By virtue of her employment, Respondent was a state miscellaneous member of CalPERS.

DSH served Respondent with a Notice of Adverse Action (NOAA) terminating her employment for cause due to an incident in July 2010, in which Respondent left the keys inside of a running unattended mail van for which she was responsible. The mail van was parked inside the secured facility and posed a great danger to the patients, staff, and the public. After an appeal and hearing, the State Personnel Board upheld the termination for cause in a final decision issued July 2012.

On June 17, 2013, Respondent submitted an application for disability retirement. In filing the application, disability was claimed on the basis of elbow, wrist, neck and shoulder injuries occurring in February 2005 and August 2010.

In reviewing Respondent's disability retirement application, CalPERS staff discovered that she had been terminated from her position with DSH effective October 29, 2010. Upon review of the evidence, staff determined that Respondent was ineligible to apply for disability retirement due to operation of the *Haywood* and *Smith* cases, because she had been terminated for cause and her termination was neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement. Respondent appealed and hearing was held and completed on December 11, 2014.

The cases of *Haywood v. American River Fire Protection District* (1998) 67 Cal.App.4th 1292 (*Haywood*) and *Smith v. City of Napa* (2004) 120 Cal.App.4th 194 (*Smith*) preclude Respondent from filing an application for disability retirement. The *Haywood* court found that when an employee is fired for cause and the discharge is neither the ultimate result of a disabling medical condition nor preemptive of an otherwise valid claim for disability retirement, termination of the employment relationship renders the employee ineligible for disability retirement. The ineligibility arises from the fact that the discharge is a complete severance of the employer-employee relationship. A disability retirement is only a "temporary separation" from public service, and a complete severance would create a legal anomaly – a "temporary separation" that can never be reversed. Therefore, the courts have found disability retirement and a "discharge for cause" to be legally incompatible.

The *Smith* court explained that to be preemptive of an otherwise valid claim, the right to a disability retirement must have matured before the employee was terminated. To be mature, there must have been an unconditional right to immediate payment at the time of termination unless, under principles of equity, the claim was delayed through no fault of the terminated employee or there was undisputed evidence of qualification for a disability retirement.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

Respondent represented herself and testified at the hearing. Respondent claimed that her employer terminated her because they could not reasonably accommodate her.

The Administrative Law Judge (ALJ) found that Respondent did not meet her burden of presenting evidence establishing that her application was cancelled in error. Respondent was terminated for cause, and there was no credible evidence that the termination was due to a physical or mental condition, nor was it preemptive of an otherwise valid claim for disability retirement.

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

February 19, 2015



CHRISTOPHER PHILLIPS
Staff Attorney